



Planning and Energy Resources Division
Request for Proposals

Market Characterization and Assessment Study

Business Sector:
For New Construction and Existing Facilities

Date Issued: Dec. 23, 2010

Response Due By: Jan. 25, 2011

Overview

The Vermont Department of Public Service (Department or DPS) is responsible for evaluating energy efficiency programs implemented by Vermont's Energy Efficiency Utilities (EEU's). The purpose of this Request for Proposals is to select a Consultant, or team of Consultants, to conduct a survey and on-site assessment of existing business facilities in Vermont and a business new construction baseline study. This study will characterize Vermont's current baseline position in business (commercial/ industrial) markets by documenting current equipment, lighting, HVAC, natural gas heating, process and hot water heating systems, building shell characteristics and adherence to Commercial Building Energy Standards (CBES).

Consultants must have extensive experience and demonstrated abilities in all aspects of energy efficiency evaluation techniques, strategies, and principles, including study design, phone survey design, on-site data gathering in business facilities, data analysis, statistical sampling design to address reliability, variance, and bias; and report writing.

Proposals are due by 4:00 January 25, 2011 with the goal of selecting a Consultant by February 7, 2011. The contract will start as soon as practicable following the contract award for work to be completed by mid November 2011. The selected Consultant must be available to begin work immediately. Proposals must not exceed \$575,000. Preference may be given to contractors requesting lower pay rates and/or overall lower budget amounts than comparable proposals. In addition, the selection process will give consideration to proposals that highlight reasonable cost saving strategies.

Questions about the RFP should be submitted in writing to no later than January 12, 2011. Responses to questions will be posted on the DPS website by January 19, 2011. Four original hard copies and an electronic copy (electronic copy may be delivered via email) must be delivered to Brian Cotterill, Vermont Department of Public Service. Both electronic and hard copies must arrive before the deadline. Proposals and questions should be addressed to:

Brian Cotterill
Energy Programs Specialist
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601
Phone: (802) 828-3212
Email: brian.cotterill@state.vt.us

Introduction

The Vermont Department of Public Service is seeking an experienced energy efficiency program evaluation Consultant to provide business sector (commercial and industrial) market characterization and baseline studies related to the evaluation of Vermont EEU programs.

The Department conducts its evaluation efforts in cooperation with the EEU, Efficiency Vermont (EVT) operated by Vermont Energy Investment Corporation (VEIC) and Burlington Electric Department (BED), who delivers the EEU service to electric ratepayers in the City of Burlington.

Vermont has a long history of delivering energy efficiency programs to electric ratepayers. BED has delivered energy efficiency to its ratepayers for decades, under the jurisdiction of the Public Service Board (Board). For the last ten years, energy efficiency services have been delivered to ratepayers in the remainder of the state by EVT, operating under a contract between VEIC and the Board. Recently, the Board has approved a change in the structure of energy efficiency program delivery from this contract mechanism to an “Order of Appointment”. The Board has determined that VEIC and BED will be appointed as EEU’s.¹ The Board is also in the process of investigating the appointment of an EEU entity to provide natural-gas efficiency services. These services have been provided for at least 15 years by Vermont Gas Systems, the State’s lone natural gas provider. Vermont Gas is beginning the process to be appointed as the EEU for natural gas. Therefore this study will have application across as many as three EEU jurisdictions.

Market Characterization and baseline studies are generally completed by the DPS to gather and analyze information about the characteristics of different markets. These studies have multiple purposes, including: to support assessment of demand-side resource potential; to aid in the development of market intervention strategies; to assist in the establishment of baselines from which efficiency savings can be measured; and to provide data for use in forecasting future heating fuel and electricity consumption. Such studies should include phone surveys and on-site verification to determine building shell characteristics, appliance and equipment saturations and efficiencies, market player attitude, behavior trends and market structure analysis.²

This RFP is one of two concurrent RFP’s issued by the DPS to procure market assessments and baseline studies. Some coordination between studies may be required by the selected Consultant(s). These studies will characterize Vermont’s current baseline position in residential and commercial/ industrial markets by documenting current appliance, equipment, lighting, HVAC, natural gas heating, hot water and process systems, building shell characteristics and

¹ The Public Service Board maintains a website that has tracked the proceeding and posted relevant materials: <http://psb.vermont.gov/docketsandprojects/eeu/7466> . The Order in Docket 7466 “Approving Change in EEU Structure and Scheduling Status Conference” can be found here: <http://psb.vermont.gov/sites/psb/files/orders/2009/7466OrderReStructure.pdf>

² As defined in Appendix A of the Public Service Board’s Process and Administration of an Order of Appointment for EEU’s and further referenced in the Order’s Section II,2,G (a) appointed EEU’s shall participate in ongoing evaluation and planning activities to support their long range resource planning responsibilities. (The full Order of Appointment document is available upon request.)

adherence to respective building code energy standards (CBES & RBES). Documenting the range and saturation levels of such features and their relative presence within the built environment is the primary focus. The studies will use phone surveys and on-site verification methods to establish current market sector baselines and to identify opportunities for energy efficiency equipment.

The Department conducts market characterization studies on a three year cycle; the last study was conducted in 2008. Market studies for both the residential and commercial sector can be found here: http://publicservice.vermont.gov/energy/ee_perfomanceevaluation.html.

Respondents are encouraged to review these past studies and the other materials at this site to familiarize themselves with the scope and methodology of the Department's past EEU evaluation efforts.

In addition, general information about energy efficiency programs in Vermont is available at:

- Efficiency Vermont, www.encyvermont.org
- Burlington Electric Department, www.burlingtonelectric.com
- Vermont Gas Systems, <http://vermontgas.com>
- Vermont Public Service Board, <http://psb.vermont.gov>

Scope of Work

The primary purpose of this study is to document current baseline data for existing facilities and new construction in the business sector (commercial and industry). The study will document the existing saturation and efficiency levels of features such as equipment, lighting, HVAC, natural gas heat, hot water and process systems, building shell characteristics and adherence to Commercial Building Energy Standards for new construction (CBES). A mix of phone surveys and on-site verification is the expected data collection method. Consultants will also interview market actors including but not limited to industry insiders and outsiders, EEU program participants and non-participants, builders, architects and trade allies to synthesize current conditions and trends regarding opinions and experiences related to energy efficiency in Vermont. Consultants should also assess market actor awareness and opinions of the EEU's, and any make recommendations for improvement.

Surveys and on-site assessments will not need to include extensive energy audit type building measurements and detailed modeling of specific site energy use. Rather, data collection efforts will gather information on current physical building and equipment characteristics and efficiencies, plus gather qualitative data on customer perceptions and receptiveness of energy efficiency as a practice as well as the quality of service provided by the EEU's. Note, that on-site assessments are not energy audits, however, bidders should plan to include a simple summary report of findings for business owners to use as a future resource for improving efficiency if they so choose.

The hired Consultant will use this information to characterize the existing and new construction building and equipment stock in the business sector in Vermont, and identify opportunities for increased energy efficiency statewide and within discrete EEU jurisdictions. Studies will

propose methodologies that characterize the following territories: (1) the state as a whole (2) a number of Geographically Targeted areas with Transmission and Distribution (T&D) constraints (3) BED's service territory and (4) Vermont Gas Systems (VGS) service territory.

EEU territories vary in size and nature plus territories overlap to various degrees. Proposals should outline a statistical sampling design able to answer multiple research questions with a single coordinated approach (include sample sizes and justify oversampling in territories as needed). Statistical confidence of findings should be proposed for the individual EEU territories and for the entire study. The DPS is looking for the strongest and most reliable approach for accomplishing the goals of the research while keeping the study within the budget.

Task 1 – Study of Business New Construction and Major Renovation Projects

The selected Consultant will mix phone surveys and on-site visits to document building and equipment “as-built” status and characterize current energy efficiency levels being achieved in these markets including but not limited to:

- A. Determine lighting baseline including: baseline lighting power density (LPD) and installed lighting capacity, baseline lighting technology present and associated saturation shares (including socket saturations for efficient lighting such as super T8's, CFL's and LED's) occupancy sensors and lighting control characteristics, integration of daylighting technologies, etc.
- B. Determine major equipment baseline including: HVAC, hot water and process use, fuel type distributions, general business related electronics and associated efficiency characteristics.
- C. Determine the characteristics of the remodeling market (gut rehabilitation and major additions) including: practices regarding building shell efficiency, adherence to code, associated equipment change-out rates and efficiency characteristics, the degree which business owners are working with EEU's when renovating and how energy efficiency might be better incorporated into the market.
- D. Commercial building shell characteristics:
 - a. Respondents should propose a method for assessing building shell characteristics while conducting assessments of the above markets and,
 - b. Respondents should propose a method for determining adherence to the Vermont Commercial Building Energy Standards (CBES).
- E. Develop survey and interview instruments for the above sub-tasks.
- F. Develop simple summary report of findings to leave behind after on-sites.

It should be noted that based on the experience of past studies and that business new construction and renovation projects are down in Vermont and it may be difficult to identify an appropriate sample population. Proposals should fully outline a methodological approach(es) that will aim to identify new construction projects recently completed and produce a suitable sample size for this portion of the study.

Task 2 - Study of Existing Business Facilities

The selected Consultant will mix phone surveys and on-sites to document building and equipment “as-is” status and characterize current energy efficiency levels being achieved in these markets including but not limited to:

- A. Determine lighting baseline including: baseline lighting power density (LPD) and installed lighting capacity, baseline lighting technology present and associated saturation shares (including socket saturations for efficient lighting such as super T8’s, CFL’s and LED’s) occupancy sensors and lighting control characteristics.
- B. Determine major equipment baseline including: HVAC, hot water and process use, fuel type distributions, general business related electronics and associated efficiency characteristics.
- C. Determine the characteristics of the overall building energy efficiency: including the building shell and other major equipment (in addition to lighting and HVAC, hot water and process use) document existing age, condition, and, as feasible, overall efficiency level.
- D. Through interviews with businesses: gather additional data regarding actions relating to potential energy efficiency improvement, including anticipated equipment change-out rates, past and potential future energy efficiency and weatherization improvements, and participation in any of the EEU’s retrofit type programs (note: analysis of data for this sub-task occurs in Task 3.).
- E. Develop survey and interview instruments for the above sub-tasks.
- F. Develop simple summary report of findings to leave behind after on-sites.

(Note: Sampling for Task 1 and 2 should include multi-family buildings more than three stories as Vermont code considers these commercial buildings. In these cases the Business Sector Consultant will be asked to collect data related to the whole building and provide them to the DPS for use in the Residential Sector study.)

Task 3 - Missed Opportunities and Remaining Potential

Identify energy efficiency “missed opportunities” and “remaining potential” in the business sector and any other areas of potential for improving energy efficiency as it relates to lighting, equipment, HVAC, natural gas, hot water and process use, building envelope characteristics. Task 3 analyzes data and synthesizes results from Task 1 and 2 by concisely highlighting areas of the market where missed opportunities and efficiency potential remain.

Note, the Department is currently conducting an in-depth long range Energy Efficiency Potential Study that considers Technological, Economic and Achievable Potential as well as identification of emerging technologies and practices. Task 3 is not intended to be duplicative of these efforts, rather, it is intended to use the most current and up-to-date business sector market characterization data to highlight “today’s market opportunities” for improving lighting, equipment and building shell energy efficiency.

Task 4 – EEU Service Quality and Process Insights

Interviews and on-site data collection should consider EEU service quality and effectiveness of EEU processes. Analysis of service quality and process insights should consider reasons for

participation and non-participation in efficiency programs; including but not limited to participation motivation, barriers to participation and factors influencing decision making related to using or not using EEU services as well as attitudes, perceptions, energy efficiency literacy and general awareness related to efficiency and EEU services.

Consultants should identify how EEU services can be modified to increase participation, improve operations and augment program design based on insights gleaned from characterizing the market. A discussion of these and other relevant qualitative observations made by the Consultant throughout the study is required.

Task 5 - Characterization in Geographically Targeted Areas

By order on November 4, 2008, the Public Service Board directed EVT to allocate additional funds to discreet geographic areas identified by Vermont electric utilities as areas requiring T&D upgrades in the near future. Geographically targeted areas (GeoTargeting) for the 2009-2011 period are referred to as (1) Southern Loop, (2) Northern Chittenden County (3) St. Albans and (4) Rutland. Currently the Department is conducting a study to evaluate the effectiveness of this initiative and if it will continue.

To help better direct program activities, the Department seeks to understand the relevant differences in business building stock baselines in these areas as well as the characterization of any remaining efficiency potential. The Department is interested in proposals that will (1) help determine if there are relevant differences in the business market associated with GeoTargeted areas compared to that of the rest of the state and (2) the existing extent of merchant load control and demand reduction in each area.

Additional information on the GeoTargeting program can be found at:

<http://psb.vermont.gov/docketsandprojects/eeu/geographictargeting/2009-2011>

The following link illustrates GeoTargeted territories:

<http://www.encyvermont.com/pages/Common/GeoTargeting/>

The consultant should propose a method for the additional separate identification and characterization of both new construction and existing the business buildings and equipment in each of the four targeted GT areas.

Task 6 - Characterization of Burlington Electric Department Territory

The consultant should propose a method for the additional separate identification and characterization of buildings and equipment in both new construction and existing business facilities as it relates to BED's territory (i.e., in addition to the overall statewide baseline).

Task 7 - Characterization of Vermont Gas Systems Territory

The Board is in the process of investigating the appointment of an EEU entity to provide natural-gas efficiency services in VGS territory. It should be noted that VGS has provided natural gas efficiency services in its territory for 15 years, however, no territory specific baseline exists.

The consultant should propose a method for the additional separate identification and characterization of buildings and equipment in both new construction and existing business facilities as it relates to natural gas (i.e., in addition to the overall statewide baseline). This portion of the proposal may be used to expand the study scope pending designation of a natural gas EEU.

The following link illustrates VGS;s service territory:

http://www.vermontgas.com/about/service_maps/

Project Management

Management responsibilities include regular project updates with the DPS manager. The selected Consultant shall assign one project manager that will be the lead in terms of communication with the DPS. Management responsibilities include regular, bi-weekly (at a minimum) project updates with the DPS project manager, in which the Consultant, the DPS manager, necessary EEU representatives and subcontractors will have a conference telephone call in which the Consultant will provide a project progress review.

The Consultant shall prepare a monthly written progress report indicating the evaluation progress over the prior month, the planned activities for the next month, any issues that need to be addressed with suggested in-budget resolutions. These reports must be filed with the DPS manager by the 10th day of the month.

In addition, the Consultant should plan and budget for facilitating sufficient collaboration between the DPS, EEU's and prospective EEU's. The DPS is interested in including the EEU's input and perspective when appropriate. For example, the DPS will invite the EEU's to provide comments on draft evaluation instruments throughout the study including but not limited to survey design and sampling methodologies. Part of the Consultants role will be to efficiently synthesize collaborative input with an eye towards consensus-building with stakeholders when possible.

Databases from Project

All on-site survey and interview data collected in this project shall be entered into an electronic database(s) and provided to DPS to support additional analysis by DPS staff and to support future evaluations. Data entry procedures shall be developed to ensure data quality and consistent entry of all fields. Data shall be submitted to the DPS in a mutually acceptable, commonly usable electronic format, along with a documented data dictionary describing the database contents. Proposals should discuss the suggested database to be used and the data quality procedures planned.

Tasks and Work Schedule Timeline

Work on this project must commence as soon as the Consultant is retained. All work must be completed and provided to the DPS by mid-November, 2011.

- *Kick off Meeting:* The selected Consultant will meet with DPS staff the EEU's and any other stakeholders as determined by the DPS to ensure there is a common understanding of the project's needs and the proposed work efforts and products, as soon as possible following contract award. Prior to this meeting, the Consultant(s) need to familiarize themselves with the operation of the EEU's, the Order of Appointment Structure for efficiency delivery in Vermont, and any other relevant issues. Consultants should come to this meeting prepared to identify the level of Vermont Utility assistance needed to effectively carry out the scope of work (including data requests), and the timelines associated with this assistance. This meeting should occur in person, as soon as possible following award of the evaluation contract.
- *Revised Work Plan:* The proposal in response to this RFP will have a draft work plan. Following the kick-off meeting, a revised work plan documenting the common understandings between the Consultants and the DPS (and stakeholders) should be submitted to the DPS. This plan should represent the detailed schedule for completion of interim products (e.g. any preliminary results) and final report products (e.g. the draft and final report, and final project databases). The revised work plan should be provided to the DPS within one week following the kick-off meeting.

Budgets and the Proposal Submission

Respondents should clearly outline budgets for each of the tasks and sub-tasks of this evaluation and for the total project, including project management, kick off meeting, database management, and reporting. Hourly rates should be clearly identified, and should remain the same for the duration of the contract.

The proposal should present a clear understanding of the issues to be addressed and a description of how the bidders proposed approach will accomplish the goals of this study. The proposal should include the following sections:

1. Introduction.
2. Understanding of the scope of work and associated issues.
3. Overview of the proposed approach.
4. Detailed Task descriptions (including anticipated EEU involvement if applicable).
5. Description of suggested database to be used and the data quality procedures planned.
6. Task, sub-task, and total project budget that includes a listing of all staff assigned to the project, including project manager, and their time allocations and billing rates.
7. Timeline.
8. Qualifications of firm(s), including management and staff structure.
9. Qualification of individuals.
10. Descriptions of similar projects completed.
11. References, including a short description of the work performed for such references.
12. Attachment A: Sample report from prime Consultant.
13. Other attachments as may be necessary.

Criteria for Selection

The DPS will evaluate the bidders' proposals according to the criteria listed below. This list is not necessarily provided in order of relative importance.

1. Responsiveness/thoroughness and practicality of the proposed approach in meeting the research objectives and for completing the tasks described in this RFP.
2. Experience of *key personnel* in successfully completing similar research and ability to provide on-time, in-budget research.
3. Experience of *the Consultant* in successfully completing similar research and ability to provide on-time, in-budget research.
4. The proposal presentation with respects to the following representations / discussions:
 - Clear understanding of study requirements.
 - Technical expertise to conduct the research.
 - Proven ability to accomplish both large sample on-site data collection as well as high quality research and analysis.
 - Ability to provide high-quality written analysis and reports.
 - Quantity and quality of work relative to specified budget.
5. Proposed staffing plan of bidder, including staff assignments.
6. Past performance of the bidder and any proposed sub Consultants.
7. Quality and completeness of the proposal (in terms of coverage, organization, graphics, grammar, spelling, etc.). The quality of the proposal (along with the sample report) will be considered an indication of the likely appearance of deliverables from the Bidder.
8. Consultant's plan and ability to be present in Vermont due to the heavy field sampling required for this study.
9. Price.

Performance

Consultant must agree to the following performance measure language:

1. Relationships – work well with DPS staff, EEU's and the general public.
2. Quality – written work (including research) is well-written, clear and thorough and delivered on a timely basis.
3. Timeliness – submits all work in advance of deadlines to allow adequate time for DPS review and production.

In the event the quality of work described above was to deteriorate in any way, a request would be made that the work be resubmitted immediately at no additional charge to the Department. If there were not an immediate improvement in the overall quality of work this could be grounds for cancellation of the contract per the contract Terms and Conditions.

General Requirements

The Consultant hired must meet the following General Requirements:

1. Consultant(s) must have extensive experience and demonstrated abilities in all relevant aspects of energy efficiency evaluation techniques, strategies, and principles, including study design, on-site data gathering in residential and/or commercial buildings, data analysis, statistical sampling design to address reliability, variance, and bias; and report writing. Consultants should possess a good knowledge of energy efficiency program design, implementation, monitoring, verification, and evaluation.
2. Consultant(s) must be fully conversant with current energy efficiency information technology systems, DSM tracking systems, and applications.
3. Consultant(s) must not be currently employed by a partner firm in Efficiency Vermont, by EVT itself, by the Burlington Electric Department or natural gas EEU, and must agree not to undertake such employment during the term of this contract without explicit approval from the Department of Public Service.
4. Consultant(s) must be available to begin work immediately after the contract is awarded and commit to work completion as quickly as possible.
5. Due to the heavy field sampling required for this study consultants should have the ability to be present in Vermont and available to meet in person on short notice.
6. A lead Consultant and lead contact person must be identified in joint proposals.

Terms and Conditions

1. Bidders must provide an hourly rate for various personnel to be assigned to each task identified in the proposal. While actual hours by task cannot be known with precision in advance, a best estimate should be provided with the proposal. A “not to exceed” budget figure will be established in the Terms and Conditions of the contract with the successful bidder.
2. Ownership of all work products will rest with the Department.
3. Any work products will be delivered to the Department upon termination of the project.
4. Consultants(s) must agree to enter a confidentiality agreement to protect certain customer specific information from public disclosure, as necessary.
5. The DPS reserves the right to amend or cancel this RFP at any time if the best interest of the State requires such action.
6. The DPS reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received and to accept any portion of a proposal if deemed in the best interest of the State.
7. News releases pertaining to this RFP, contract award, or the Project shall NOT be made without prior written approval from the DPS.
8. Selection of the winning bidder will be made based on the sole opinion of the DPS that the proposal submitted will be the most advantageous for the State.

9. The DPS reserves the right to make a selection without further discussion of proposals received. Therefore, it is important that each proposal be submitted in the most complete and accurate manner possible.
10. The DPS reserves the right to cancel any contract resulting from this RFP, for cause, as will be defined in the Terms and Conditions of the final contract.
11. Consultant agrees to the terms and conditions of Attachment A and B to this RFP, which outline the Standard State Provisions for Contracts and Grants. Any requested deviations from these Attachments must be presented in the response to this RFP. The DPS and the State reserve the right to deny any such request.

The DPS assumes no liability in any fashion with respect to this RFP or any matters related thereto. All prospective service providers and their assigns or successors, by their participation in the RFP process, shall indemnify, save and hold the DPS and its employees and agents free and harmless from all suits, causes of action, debts, rights, judgments, claims, demands, accounts, damages, costs, losses and expenses of whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the recommendation of a service provider and any action brought by an unsuccessful prospective service provider.

Conflict of Interest and Confidentiality

As data handled by the Selected Consultant(s) is potentially sensitive in nature, the Consultant will need to sign and abide by a confidentiality agreement provided by the DPS, or by EVT, BED or natural gas EEU when transfer of data is directly from those organizations. These confidentiality agreements generally do not expire.

**ATTACHMENT A: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS**

- 1. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 2. Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
- 3. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
- 4. Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

- 7. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

- 8. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
- 9. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

- 10. Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
- 11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
- 12. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 13. Taxes Due to the State:**
 - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include all subcontract or subgrant agreements and a tax certification in accordance with paragraph 11 above.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

ATTACHMENT B

Other Provisions

1. **Work Product Ownership.** Upon full payment by the State, all products of the Contractor's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Contractor.
2. **Prior Approval/Review of Releases.** Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the Contractor under this contract shall be approved by the State prior to release.
3. **Ownership of Equipment.** Any equipment purchased by or furnished to the Contractor by the State under this contract is provided on a loan basis only and remains the property of the State.
4. **Confidential Information.** During the course of the work contemplated in this contract, the Contractor shall not on its own enter into any agreements which pertain to information to be used in performing such work and which restrict access to information or denominate information as confidential, allegedly confidential, or protected from disclosure.

During the course of the work contemplated in this Contract, the Contractor may be asked by the Department of Public Service to use information which has been denominated as allegedly confidential information and protected from disclosure under a protective agreement entered into by the Department. Any and all personnel of the Contractor, including sub-contractors, who are to use such information shall sign the appropriate schedule to the protective agreement and shall protect the information from disclosure to persons who have not agreed to be bound by that agreement. The Contractor shall ensure that its personnel and sub-contractors comply with the protective agreement and shall return all copies of the allegedly confidential information within twenty-one (21) days of completion of its use or promptly upon request of the Department.

This paragraph concerns a breach of an agreement which restricts access to information or denominates information as confidential, allegedly confidential, or protected from disclosure ("a breach of protective agreement"). The Contractor shall be solely responsible for any costs, liabilities, or obligations incurred by the Contractor because of the Contractor's breach of a protective agreement. Also with respect to the Contractor's breach of a protective agreement, the Contractor shall be solely responsible for any liabilities or obligations, including but not limited to judgments and legal costs, of the

Department of Public Service to a party who signed or is the beneficiary of such an agreement. In the event that an action is brought against the Department of Public Service arising out of the Contractor's breach of a protective agreement, the Contractor shall be responsible for the legal costs of the Department of Public Service.

5. **Legal Services:** If contractor is providing legal services under this contract, contractor agrees that during the term of the contract he or she will not represent anyone in a matter, proceeding, or lawsuit against the state of Vermont or any of its agencies or instrumentalities. After termination of this contract, contractor also agrees that he or she will not represent anyone in a matter, proceeding or lawsuit substantially related to this contract.